

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-2

UNITED STATES OF AMERICA,

Appellant,

—v.—

TWELVE 200 FEET REELS OF SUPER 8 MM. FILM, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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RELEVANT DOCKET ENTRIES

70-765-IH

USA

vs

12 200 Ft REELS OF SUPER 8 MM FILM ETC

DOCKET ENTRIES

DATE	PROCEEDINGS
4/ 9/70	Fld Complt for forfeiture—seizure of obscene films —Bur of Customs. Fld prae for & issd W/A. Md JS-5.
4/24/70	Fld W/A retd exec. Fld prae for and issd alias W/A. 8 Film
4/27/70	Fld ord dismissing action & that U.S. Marshal return deft material to importer. (Ent 4/27/70) JS-6
4/27/70	Fld Plt's NOTICE OF APPEAL, with service thereon; Fld Exparte motn for Ord staying execution of Ord of dismissal; Fld Affid of Ariel G. Paladini; Fld Ord (F) remotn for stay of execution; Fld designation of record on appeal to be transmitted to US Court of Appeals. Copy of Notice of Appeal to Judge and to Jury Clerk.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Civil No. 70-765-IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

12 200-Ft. Reels of Super 8 mm FILM, 1 200-Ft. Reel of 8 mm FILM, 7 MAGAZINES Entitled "Simona", 2 1970 CALENDARS, 18 COLOR SLIDES, 9 Black and White PHOTOGRAPHS, 1 BOOKLET "Rendez-Vous", 17 BROCHURES for "Climax" Films, 5 BROCHURES for "Spot Light Film", 19 BROCHURES for the Magazines "Prince" and "Dream", 17 BROCHURES for the Film "Sixus", 5 Miscellaneous BROCHURES, 1 BOOKLET entitled "Dog-Instruction 4", 1 BOOKLET entitled "Animal Orgy", 1 BOOK entitled "animal Special", 1 ROLL 8 mm Film Marked "Undeveloped." "Do not open.",
DEFENDANTS

COMPLAINT FOR FORFEITURE—Filed April 9, 1970

For its claims against the defendants, the United States of America alleges as follows:

I

That this Court has jurisdiction under 28 U.S.C. § 1345 and 19 U.S.C. § 1305.

II

That on April 2, 1970, the defendants were imported into the commerce of the United States on behalf of A. Paladini.

III

That the plaintiff believes that the defendant roll of film marked "Undeveloped." "Do not open." is believed

to be obscene because of the nature of the merchandise which it accompanies. That the remaining defendants are obscene which fact makes the defendants subject to seizure and forfeiture under the provisions of 19 U.S.C. § 1805.

IV

That on April 2, 1970, the defendants were seized by duly authorized Customs Agents in Los Angeles, California, within the jurisdiction of this Court.

V

That the defendants are in the possession and custody of the United States Attorney, United States Court House, 312 North Spring Street, Los Angeles, California, or elsewhere within the jurisdiction of this Court.

WHEREFORE, the United States prays that due process issue to enforce the forfeiture of the defendants and that due notice of these proceedings be given to all interested parties.

WM. MATTHEW BYRNE, JR.
United States Attorney
FREDERICK M. BROSIQ, JR.
AUSA
Chief of Civil Division

/s/ Larry L. Dier
Assistant U. S. Attorney
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Civil No. 70-765-IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

**12 200-Ft. REELS OF SUPER 8 MM FILM, ETC. (See
Attachment for Complete Description.) DEFENDANT(S)**

**WARRANT FOR ARREST IN ACTION IN REM—
Filed April 24, 1970**

**TO THE UNITED STATES MARSHAL FOR THE
CENTRAL DISTRICT OF CALIFORNIA:**

A Complaint having been filed in this action, it is
therefore—

ORDERED that you attach the defendant film, maga-
zines, calendars, slides, etc. and detain the same in your
custody until further order of the Court, and that you
give due notice to all interested persons that they must
file their Claims and Answers with the Clerk of this
Court within the time allowed by law.

YOU ARE FURTHER ORDERED to file this process
in this Court with your return thereon promptly after
execution thereof.

DATED: This 9th day of April, 1970.

EMORY G. HATCHER
Clerk

/s/ Mabel McElwee
Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-765 IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

12 200-Ft. Reels of Super 8 mm FILM, 1 200-Ft. Reel of 8 mm FILM, 7 MAGAZINES Entitled "Simona", 2 1970 CALENDARS, 18 COLOR SLIDES, 9 Black and White PHOTOGRAPHS, 1 BOOKLET "Rendez-Vous", 17 BROCHURES for "Climax" Films, 5 BROCHURES for "Spot Light Film", 19 BROCHURES for the Magazines "Prince" and "Dream", 17 BROCHURES for the Film "Sixus", 5 Miscellaneous BROCHURES, 1 BOOKLET entitled "Dog-Instruction 4", 1 BOOKLET entitled "Animal Orgy", 1 BOOK entitled "animal Special", 1 ROLL 8 mm Film Marked "Undeveloped." "Do not open.",
DEFENDANTS

ORDER OF DISMISSAL—Filed April 27, 1970
[Entered April 27, 1970]

It appearing that the complaint in this matter is based on 19 U.S.C. § 1305; it further appearing that a three-judge court in *United States of America v. 37 Photographs*, Civil No. 69-2242-F, determined that 19 U.S.C. § 1305 is unconstitutional on its face; and it further appearing that this Court ought to abide by that decision pending its possible review in the United States Supreme Court.

IT IS, THEREFORE, ORDERED that the within action is dismissed and that the United States Marshal return the defendant material to the importer.

DATED: This ____ day of April, 1970.

/s/ Warren J. Ferguson
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-765 IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

12 200-Ft. REELS OF SUPER 8 MM FILM, ETC., ET AL.,
DEFENDANTS

EX PARTE MOTION FOR ORDER STAYING EXECUTION OF
ORDER OF DISMISSAL—Filed April 27, 1970

The plaintiff moves for an Order staying the Order of Dismissal dated April , 1970, and staying the order requiring the Marshal to return the defendant material to the importer. This motion is made on the ground that the constitutionality of 19 U.S.C. § 1305 is presently before the Supreme Court in the case of *United States of America v. 37 Photographs*, Central District of California, Case No. 69-2242-F, which has been appealed directly to the Supreme Court. This motion is made on the further ground that the defendant material goes substantially beyond that involved in the *37 Photographs* case and should not be released unless and until the Supreme Court affirms the lower court and holds that the Customs obscenity statute is unconstitutional.

This motion is made in accordance with Rule 8, Federal Rules of Appellant Procedure.

Pursuant to Local Rule 3(j), the Court is advised that the importer, A. Paladini, came to the United States Attorney's office on Friday, April 24, 1970, to discuss this matter. He stated that the defendant which is listed as 1 200' reel of 8 mm film is in reality a 16 mm film entitled "Eva 68." He further stated that the defendant which is identified as 1 roll of 8 mm film marked "Undeveloped. Do not open." contains approximately 40 feet of undeveloped film representing his efforts to make a documentary film unrelated to sex or obscenity.

Mr. Paladini was advised that this ex parte motion would be made and he stated that he did not intend to hire an attorney or to file a claim and answer.

The Court is further advised that copies of this motion as it was prepared for filing on April 22, 1970, were mailed to Mr. Paladini and were in his possession when he was in the United States Attorney's office on April 24, 1970. Assistant U. S. Attorneys Larry L. Dier and Philip S. Malinsky viewed the 16 mm film entitled "Eva 68", which is listed in the complaint as 1 200' reel of 8 mm film. As a result of this viewing, the plaintiff is willing to return this film to the importer as well as the film identified as 1 roll of 8 mm film marked "Undeveloped. Do not open." since they are not obscene. The plaintiff would, therefore, agree that these two items be returned to the importer as this time.

The Court is further advised that the plaintiff has no evidence with which to contradict Mr. Paladini's affidavit, and, therefore, does not contest the fact that this was a private importation.

DATED: April 24, 1970.

WM. MATTHEW BYRNE, JR.
United States Attorney
FREDERICK M. BROSI, JR.
Assistant U. S. Attorney
Chief of Civil Division

/s/ Larry L. Dier
LARRY L. DIER
Assistant U. S. Attorney
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Civil No. 70-765 IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

12 200-Ft. REELS of SUPER 8 MM FILM, ETC., ET AL.,

DEFENDANTS

ORDER RE MOTION FOR STAY OF EXECUTION—

Filed April 27, 1970

The Court having read the Ex Parte Motion for Order Staying Execution of Order of Dismissal, as well as the rest of the papers on file herein, and it appearing that this importation was for private rather than commercial purposes

IT IS HEREBY ORDERED that the motion for a stay of the order to return the defendant articles is denied.

DATED: This 27 day of April, 1970.

**/s/ Warren J. Ferguson
United States District Judge**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-765 IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

12 200-Ft. REELS OF SUPER 8 MM FILM, ETC., ET AL.,
DEFENDANTS

AFFIDAVIT OF ARIEL G. PALADINI—Filed April 27, 1970

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

ARIEL G. PALADINI, being first duly sworn, deposes and says:

1. I am the person who imported the defendant objects, although some of them are misdescribed. That none of the defendants were imported by me for any commercial purpose but were intended to be used and possessed by me personally.

The defendant that is listed as 1 roll 8 mm film marked "Do not open" is in fact a roll of undeveloped 16 mm film which is a color film taken by me in Denmark of historical buildings and landmarks and is in no way related to the subject matter of some of the other defendant objects. I agree to pay the cost of developing this film so that what I have said about its content can be verified.

Regarding the defendant film that is described in the complaint as 1 200' reel of 8 mm film, I declare is actually a reel of 8 mm super film with sound which is entitled "Eva 68." I further declare that it is, like the undeveloped film, not like the rest of the defendant objects and should be released to me.

DATED: April 24, 1970.

/s/ Ariel G. Paladini

ARIEL G. PALADINI

Subscribed and sworn to before me this 24th day of April, 1970.

/s/ Lois M. Parkinson

LOIS M. PARKINSON

**Notary Public in and for
said County and State**

My Commission expires Nov. 9, 1970.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Civil No. 70-765 IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

**12 200-FT. REELS OF SUPER 8 MM FILM, ETC., ET AL.,
DEFENDANTS**

NOTICE OF APPEAL—Filed April 27, 1970

Plaintiff, United States of America, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of Dismissal entered in this case on April 7, 1970.

The attorneys for the parties and their addresses are: For the plaintiff, United States of America, Wm. Matthew Byrne, Jr., United States Attorney, Frederick M. Brosio, Jr., Assistant U. S. Attorney, Chief of Civil Division, and Larry L. Dier, Assistant U. S. Attorney, United States Court House, 312 North Spring Street, Los Angeles, California, 90012; the importer of the defendant is A. Paladini who gave as his address 23 La Porte Avenue, Arcadia, California. He is not known to be represented by an attorney.

DATED: April 22, 1970.

**WM. MATTHEW BYRNE, JR.
United States Attorney
FREDERICK M. BROSIO, JR.
AUSA
Chief of Civil Division**

**/s/ Larry L. Dier
LARRY L. DIER
Assistant U. S. Attorney
Attorneys for Plaintiff**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-765 IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

12 200-Ft. REELS OF SUPER 8 MM FILM, ETC., ET AL.,
DEFENDANTS

EX PARTE MOTION FOR STAY OF ORDER OF DISMISSAL
AND ORDER THEREON—Filed May 7, 1970

The plaintiff moves for an Order staying the Order of Dismissal which was entered on April 27, 1970, for a period of approximately two weeks, until May 22, 1970. The reason for this requested stay is to give the Department of Justice additional time to consider whether to apply to the Supreme Court for a stay of execution pending appeal, which stay was refused by the Ninth Circuit on May 4, 1970.

This motion is made to stay the return order as to all of the defendant articles except the motion picture film "Eva 68" and the roll of 8 mm film marked "Undeveloped. Do not open." These two defendants should be returned to the importer at once because they are not obscene.

Pursuant to Local Rule 3(j), the Court is advised that the importer, Mr. Ariel G. Paladini, was advised on May 6, 1970, that this application would be made. Mr. Paladini advised the undersigned that he had no objection to the stay requested and did not intend to appear to contest it.

DATED: May 6, 1970.

WM. MATTHEW BYRNE, JR.
United States Attorney
FREDERICK M. BROSI, JR.
Assistant U. S. Attorney
Chief of Civil Division

/s/ Larry L. Dier
LARRY L. DIER
Assistant U. S. Attorney
Attorneys for Plaintiff,
United States of America

IT IS SO ORDERED this 7 day of May, 1970.

/s/ Warren J. Ferguson
United States District Judge

SUPREME COURT OF THE UNITED STATES
No. —, October Term, 1969

UNITED STATES, APPELLANT

vs.

12 200-Ft. REELS OF SUPER 8 MM FILM, ET AL.

ORDER

UPON CONSIDERATION of the application of the Solicitor General,

IT IS ORDERED that the judgment of the United States District Court for the Central District of California dismissing the government's action for customs forfeiture of certain material as obscene, entered on April 27, 1970, be, and the same is hereby, stayed pending the timely perfecting of an appeal in this Court. Should the appeal be timely filed in this Court, this stay is to remain in effect pending the sending down of the judgment of this Court.

/s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the
Supreme Court of the
United States

Dated this 20 day of May, 1970.

A true copy

Test:

JOHN F. DAVIS
Clerk of the Supreme Court
of the United States

By /s/ Michael Rodak, Jr.
Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-765 IH

UNITED STATES OF AMERICA, PLAINTIFF

v.

12 200-Ft. REELS OF SUPER 8 MM FILM, ETC., ET AL.,
DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 18, 1970

Plaintiff, United States of America, hereby appeals to the United States Supreme Court under the provisions of 28 U.S.C. §§ 2101 and 2282 from the Order of Dismissal entered in this case on April 27, 1970.

The attorneys for the parties and their addresses are: For the plaintiff, United States of America, Robert L. Meyer, United States Attorney, Frederick M. Brosio, Jr., Assistant United States Attorney, Chief, Civil Division, and Larry L. Dier, Assistant United States Attorney, United States Court House, 312 North Spring Street, Los Angeles, California, 90012; for the claimant, Ariel G. Paladini, Post Office Box 451, Sierra Madre, California, 91024.

DATED: This 18th day of May, 1970.

ROBERT L. MEYER
United States Attorney
FREDERICK M. BROSIO, JR.
Asst. U. S. Attorney
Chief, Civil Division

/s/ Larry L. Dier
LARRY L. DIER
Asst. U. S. Attorney
Attorneys for Plaintiff,
United States of America

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 25788

UNITED STATES OF AMERICA, APPELLANT

vs.

**12—200 Ft. REELS OF SUPER 8 MM FILM, ETC.,
ARIEL G. PALADINI, APPELLEE**

**CERTIFICATE OF CLERK, UNITED STATES COURT OF AP-
PEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED
UNDER RULE 21 OF THE REVISED RULES OF THE SU-
PREME COURT OF THE UNITED STATES**

**I, WILLIAM B. LUCK, as Clerk of the United States
Court of Appeals for the Ninth Circuit do hereby certify
the foregoing transcript of record, which is the original
transcript of record received from the Clerk of the Dis-
trict Court in the above entitled cause and certified at
the request of the counsel for the appellant USA, before
judgment of this Court, under Rule 20 of the Revised
Rules of the Supreme Court of the United States.**

**ATTEST my hand and the seal of the said
the United States Court of Appeals for the
Ninth Circuit, at the City of San Fran-
cisco, in the State of California, this 20th
day of May, 1970.**

**/s/ William B. Luck
WILLIAM B. LUCK
Clerk**

SUPREME COURT OF THE UNITED STATES**No. 364, October Term, 1970****UNITED STATES, APPELLANT****v.****12 200-Ft. REELS OF SUPER 8 MM. FILM ET AL.**

APPEAL from the United States District Court for the Central District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

June 21, 1971